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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/179,332	10/27/1998	PHILIP BATES	CCCUSA3.0-00	5557

7590 07/01/2005  
WARD & OLIVO  
708 THIRD AVENUE  
NEW YORK, NY 10017

EXAMINER

SHAH, KAMINI S

ART UNIT	PAPER NUMBER
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2142

DATE MAILED: 07/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/179,332	<b>Applicant(s)</b> BATES ET AL.	
	<b>Examiner</b> Kamini S. Shah	<b>Art Unit</b> 2142	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 March 2005.
- 2a) ☐ This action is **FINAL**.      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 30-49 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 30-49 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

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***Response to Arguments***

1. Applicant's arguments, see page 13 of remarks, filed 3/30/05, with respect to rejection under 35 USC 102 (b) as unpatentable based upon an alleged offer for sale as evidenced by the declaration of Phillip Bates have been fully considered and are persuasive. The Bates fax created an "on sale" bar pursuant to 102(b) of claims 30-49 has been withdrawn.

However, examiner rejected claims 30-49 under 35 USC 102 (b) as unpatentable based upon an alleged offer for sale as evidenced by communications between C-C-C Group and Customer Corporation is proper and remains within this communication.

2. Applicant's arguments filed 3/30/05 have been fully considered but they are not persuasive. Applicant respectfully argues that Bates fax is not a valid 102(b) on sale bar reference, thus it is not a valid reference under 35 USC 103 (a). However, examiner disagree, since the Bates fax has date 9/29/96, a year before the filing date of the instant application, a provisional application 60/063695, filed on 10/28/97. Thus, Bates fax is a valid 102 (b) reference. Therefore Bates fax is valid 103(a) reference. Therefore, the rejection under 35 USC 103(a) is still proper and remains in this communication.

Applicant argues that Bates fax is absent in the concept of helper codes as claimed in claims 30 and 43. However, examiner argues that the function of the helper codes are no more than a request for a connection to a specific server.

***Claim Rejections - 35 USC § 102***

3. Claims 30-49 are rejected under 35 U.S.C. §102(b) based upon a public use or sale of the invention as evidenced by the invoice and submitted information. This establishes an “on sale” bar to the claimed invention.

**The disclosed communications between “C-C-C Group” and “Customer Corporation” are evidence of actions that bring the claimed invention within the scope of a bar to patenting under 35 U.S. C. §102(b)**

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action. In response to applicant’s contention that there was no commercial offer for sale the Examiner no longer uses the Affidavit of Philip Bates an “on sale” bar pursuant to § 102 (b), as disclosed in note (a) of prior Office action. Accordingly, the notes (b) through (e) as evidenced by communications between C-C-C group and Customer Corporation, are still applies for rejection of claims 30-49 under 35 U.S.C. §102 (b).

***Claim Rejections - 35 USC § 103***

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kamini S. Shah whose telephone number is 571-272-2279. The examiner can normally be reached on IFP.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew B. Caldwell can be reached on 571-272-3868. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kamini S Shah  
Primary Examiner  
Art Unit 2142

kss